

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 24, 1999

IN RE:

**PETITION OF PRIMUS TELECOMMUNICATIONS,
INC. AND TELEGROUP, INC. TO PERMIT THE
SALE AND TRANSFER OF ASSETS OF TELEGROUP,
INC. TO PRIMUS TELECOMMUNICATIONS, INC.**

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) **DOCKET NO**
) **99-00461**
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**ORDER APPROVING NUNC PRO TUNC ACQUISITION
OF ASSETS PURSUANT TO TENN. CODE ANN. § 65-4-112**

This matter came before the Tennessee Regulatory Authority ("Authority") on the Petition of Primus Telecommunications, Inc. ("Primus") and Telegroup, Inc. ("Telegroup") (collectively, the "Parties") pursuant to Tenn. Code Ann. § 65-4-112 filed on June 24, 1999. The Petition filed by the Parties seeks the approval of Primus' acquisition of Telegroup's assets pursuant to an Asset Purchase Agreement entered into between the Parties on June 30, 1999. The parties filed an Amendment to the Petition ("Amendment") on July 15, 1999. The Amendment was filed to inform the Authority that the proposed transaction between the Parties set forth in the Initial Petition was consummated while this matter was pending.

The Directors of the Authority considered this matter at a regularly scheduled Authority Conference on July 27, 1999. Based upon careful consideration of the Petition, the Amendment thereto, the exhibits, and the entire record of this matter, the Authority has determined the following:

1. Primus is a Delaware corporation with its principal place of business located at 1700 Old Meadow Road, Third Floor, McLean, Virginia 22102. Primus is a wholly-owned

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subsidiary of Primus Telecommunications Group, Inc. ("PTGI"). In addition, Primus provides resold interexchange telecommunications services in Tennessee pursuant to certification granted by the Tennessee Public Service Commission ("TPSC") in Docket No. 95-03981 on February 20, 1996.

2. Telegroup is an Iowa corporation with its principal place of business located at 209 Nutmeg Avenue, Fairfield, Iowa 52556. Telegroup provides resold interexchange telecommunications services in Tennessee pursuant to certification granted by the Authority in Docket No. 97-00416 on February 17, 1998.

3. On February 11, 1999, Telegroup filed for reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., in the United States Bankruptcy Court for the District of New Jersey ("Bankruptcy Court").

4. On June 30, 1999, PTGI and Telegroup executed a Stock and Asset Purchase Agreement ("Agreement") under the supervision of the Bankruptcy Court. Pursuant to the Agreement, PTGI purchased most of Telegroup's assets, including all assets used in the provision of telecommunications services in Tennessee. At the conclusion of the transaction, Telegroup will no longer provide telecommunications services in Tennessee.¹

I. CRITERIA FOR APPROVING ACQUISITION

Under Tenn. Code Ann. § 65-4-101, any entity that owns, operates, manages or controls utility systems, plant or equipment under certification by this Authority or its predecessor, the Tennessee Public Service Commission, to provide utility service in the state of Tennessee, is a public utility. Since this merger involves two entities holding certificates in Tennessee,

¹ According to the Amendment, the Bankruptcy Court mandated that the transaction contemplated between the Parties be consummated on June 30, 1999, in an expedited manner. The Parties obeyed the mandate of the Bankruptcy Court and closed the transaction prior to obtaining Authority approval.

Authority approval is required under the provisions of Tenn. Code Ann. § 65-4-112(a). This Section provides for the following:

(a) No lease of its property, rights, or franchises, by any such public utility, and **no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority,** even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state. (Emphasis supplied).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After consideration of the entire record in this matter, including the Petition and the Amendment thereto, the Authority finds and concludes as follows:

1. That Primus and Telegroup have been engaged in the business of providing telecommunications services in Tennessee;

2. That the Authority has jurisdiction over matter pursuant to Tenn. Code Ann. §§ 65-4-101 and 65-4-112;

3. That the transaction between Primus and Telegroup as described herein required consummation in an expedient manner pursuant to a mandate from the Bankruptcy Court. The transaction was completed in accordance with the Agreement executed between the parties on June 30, 1999, through which Primus acquired substantially all of the assets of Telegroup. As a result of this transaction, Telegroup will no longer provide service in the State of Tennessee or require certification as granted by the Authority in Docket No. 97-00416. Further, Primus does not seek the transfer of Telegroup's Tennessee certification.


4. That according to the Petition, Primus will serve Telegroup's former customers pursuant to the terms and conditions of the existing Telegroup tariff and the Parties will notify customers of this transaction and of the change of their telecommunications service provider.

The Petition also states that the subject transaction will enable Primus to achieve increased economies of scale and to compete more effectively in Tennessee. Based on the parties' representations, the Authority finds that the proposed acquisition appears to be proper under the requirements of Tenn. Code Ann. § 65-4-112 and should be granted *nunc pro tunc*.

IT IS THEREFORE ORDERED THAT:

1. The Petition and the Amendment thereto filed by Primus Telecommunications, Inc. and Telegroup, Inc. for the approval of a transaction by which Primus has acquired the assets of Telegroup, Inc. is granted *nunc pro tunc*:
2. The Certificate of Public Convenience and Necessity granted to Telegroup, Inc. in Docket No. 97-00416 is cancelled:
3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary